



**Statement of
Enterprise Community Partners
for the Record**

**House Ways and Means Committee
Tax Reform Working Group on Real Estate
April 15, 2013**

Chairman Johnson, Vice Chairman Pascrell, and Members of the Working Group:

Thank you for providing this important opportunity to comment on real estate issues within the context of tax reform. While we recognize that there are many portions of the tax code in need of major changes, we believe that there are also tax expenditures – specifically the Low-Income Housing Tax Credit (Housing Credit) and New Markets Tax Credit (NMTC) – that must be protected and even improved through tax reform.

Enterprise Community Partners is a leading provider of the development capital and expertise it takes to create decent, affordable homes and rebuild communities. For more than 30 years, Enterprise has introduced neighborhood solutions through partnerships with financial institutions, governments and community organizations. Enterprise has raised and invested more than \$13.9 billion in equity, grants and loans to help build or preserve 300,000 affordable rental and for-sale homes to create vital communities.

Two of the most important tools Enterprise and many other housing and community development organizations depend upon to create successful, vibrant communities are the Housing Credit and the NMTC. We urge the Committee to preserve these provisions in the tax code. To explain the reasons for their preservation, we detail the need for these tools and the evidence proving that each credit is effective and efficient in meeting its Congressional goals. We also offer recommendations to strengthen these credits, recognizing that Congress will have an opportunity to improve upon each provision of the tax code during this comprehensive overhaul.

The Low-Income Housing Tax Credit

Background

Enacted as part of the Tax Reform Act of 1986 and signed into law by President Reagan, the Housing Credit is “widely regarded as the most successful affordable housing production and preservation program in the nation’s history,” according to Harvard University’s Joint Center for Housing Studies.¹ Over its 26-year history, it has financed more than 2.6 million affordable rental homes² and leveraged nearly \$100 billion in private investment capital.

The Housing Credit provides affordable housing developments with a dollar-for-dollar federal income tax credits that are used to raise equity capital. The amount of tax credit is based on a

¹ Joint Center for Housing Studies of Harvard University, “The Disruption of the Low-Income Housing Tax Credit Program: Causes, Consequences, Responses, and Proposed Correctives,” 2009, p. 13.

² Based on the 2011 Housing Credit utilization chart, revised as of March 27 and the 2010 National Council of State Housing Agencies (NCSHA) Factbook.

percentage of eligible development costs and is claimed over a ten-year period, though the property must remain in compliance for at least thirty years. The Housing Credit was specifically designed to raise equity capital as a substitute for debt capital, which is typically used to finance real estate. However, because Housing Credit properties have limits on the rent they receive in order to keep them affordable, the level of debt must be lower. The Housing Credit thus brings in equity as a substitute for higher levels of debt.

Housing Credit: Effectiveness and Efficiency

The Housing Credit is itself a result of tax reform, and affirms Congress's belief that the private market should help provide affordable rental housing through the tax code. Through a competitive allocation process, only the affordable housing projects that are most responsive to federal and state housing priorities receive Housing Credits, limited to the minimum amount of credits required for financial feasibility. Only the apartments income-targeted to eligible low-income families may receive credits, and no credits can be claimed until the development meets all federal and state requirements and is built and occupied by eligible tenants paying affordable rents. In other words, the private sector – not the federal government – bears the risk in this program.

This pay-for-performance approach has resulted in highly effective program management, as evidenced by a foreclosure rate of 0.62 percent over the program's entire history, according to the accounting firm CohnReznick – a rate unmatched by any other real estate class. The Housing Credit is made even more efficient by state administration, which reduces federal administrative costs substantially. Both the low administrative overhead and the private sector risk-bearing underscore the benefit of having the program as part of the tax code, rather than as a federal outlay. States are required to ensure that Housing Credit apartments remain in good condition and in compliance with tenant income and rent rules for at least 30 years. States report instances of noncompliance to the IRS, which has the ability to recapture tax credits.

In practice the Housing Credit serves much lower income tenants on average than the law requires. In a 1997 study, the Government Accountability Office (GAO) found that Housing Credit residents earn on average 37 percent of their area media income (AMI),³ well below the minimum 60 percent of AMI required in Section 42 of the tax code. More recently, a study by New York University's Furman Center found that more than forty percent of the residents of Housing Credit properties are extremely low-income households (incomes at or below 30 percent AMI – or about \$15,000 annually on a national basis). The GAO study also found that Housing Credit apartment rents were well below market rents (on average 25 percent less than the HUD's "fair market rent") and that Housing Credit properties were well maintained.

The Housing Credit is vital to the creation and preservation of affordable housing in every state in the country. Virtually all affordable rental housing produced annually is financed through the Housing Credit, and in 2010, half of all multifamily starts were financed by the Housing Credit according to the National Association of Home Builders (NAHB).⁴ The Housing Credit finances the production of roughly 100,000 affordable homes and adds approximately \$1.5 billion in taxes and other revenues to local economies each year, according to NAHB.

³ General Accounting (now Government Accountability) Office, *Tax Credits: Opportunities to Improve Oversight of the Low Income Housing Program*, March 1997, p. 41.

⁴ Crowe, David, *Housing and Economic Outlook*, National Association of Home Builders, September 16, 2010.

Chairman Camp has stressed the importance of pro-growth tax reform that creates jobs and helps support small business. The construction and rehabilitation of affordable housing through the Housing Credit supports roughly 95,000 jobs each year, for a total of over 3.6 million jobs created over the program's history.⁵ These jobs are predominantly in the small business sector – architects, engineers, plumbers, electricians, carpenters, concrete fabricators, bricklayers, roofers, and other specialties. A 2011 National Association of Home Builders survey reports that among multifamily rental housing builders, the median number of employees supported by these businesses is 9, with 82 percent of respondents reporting fewer than 50 employees.

Without the Housing Credit, developing new affordable homes for these low-income renters would not be possible. According to the GAO report on the Housing Credit: “In establishing the tax credit incentive, Congress recognized that a private sector developer may not receive enough rental income from a low-income housing project to (1) cover the cost of developing and operating the project, and (2) provide a return to investors sufficient to attract the equity investment needed for development.”⁶ The fact that these properties are not economically viable to construct in the private market is especially true when considering the quality and characteristics of Housing Credit properties. Many Housing Credit properties are targeted to serve the elderly, disabled, veterans or other populations requiring specific design features and services that are not generally available at an affordable rate in the private market.

Not only has the Housing Credit produced quality, affordable apartments for the lowest income Americans, it brings well-designed, affordable rental housing to a wide variety of communities—from inner cities to rapidly growing suburbs to rural towns. It builds new affordable apartments and saves valuable at-risk existing affordable housing. It provides affordable homes to working families and vulnerable populations with special needs—the elderly, people with disabilities, and people who are homeless. It addresses the housing needs of acutely underserved communities, such as farm workers and Native Americans, and it is the key housing resource for transformative community redevelopment and revitalization efforts nationwide.

Furthermore, Housing Credit investment in high-poverty areas has helped families become self-sufficient and given them more economic opportunity, while improving the economic condition of their neighborhoods. A 2010 study by Christopher Walker analyzed the effects of Housing Credit housing on tenant income and home prices in neighborhoods located near all 660 New York City Housing Credit developments built between 1987 and 2003. The development of Housing Credit properties in low-income neighborhoods boosted surrounding property values by 8.5 percent, a clear indication that the market perceived an improvement in neighborhood quality. In addition, Housing Credit rents were \$525 below neighborhood market rents, effectively doubling tenants' disposable income and providing them more flexibility to pay for health care, transportation and other important family needs.⁷

⁵ National Association of Home Builders, “The Low Income Housing Tax Credit: The Most Successful Affordable Rental Housing Production Program in our Nation's History,” 2011.

⁶ General Accounting (now Government Accountability) Office, *Tax Credits: Opportunities to Improve Oversight of the Low Income Housing Program*, March 1997, p. 22.

⁷ Walker, Christopher, *Affordable Housing for Families and Neighborhoods: The Value of Low Income Housing Tax Credits in New York City*, June 2010.

Based on this track record, Harvard University's Joint Center for Housing Studies found that the Housing Credit "has sound financial underpinnings and a track record of success in delivering rental housing assistance."⁸

Need for Affordable Rental Housing

There is currently a substantial shortfall of affordable rental housing, which is likely to widen over the next several years.

- Rental markets have rebounded in many areas much faster than owner-occupied housing markets, meaning there is enough renter demand to keep rents high. Although some rental housing markets have high vacancy rates, these vacancies predominate at the upper end of the market, and their property owners have not been reducing rents significantly because they want to preserve their upper-end market niches. Lenders are similarly reluctant to force down-marketing that would impair collateral.
- "The erosion of [rental housing] affordability over the last 50 years is striking," reports Harvard. "In 1960, only 12 percent of renter households spent half or more of their incomes on housing. By 2008, that share had doubled. In 1960, half of renters in the bottom income quartile spent 39 percent or less of their incomes on housing. In 2008, half spent 54 percent or more."⁹ Between 2007 and 2010, the number of US households paying more than half of their incomes for housing rose by an astounding 2.3 million, bringing the total to 20.2 million. This means that 27 percent of renters are severely burdened.¹⁰
- Recent data from the Census Bureau found a huge shortfall in the supply of homes for extremely low-income people. Analysis of these data found that there were only about 30 units of housing affordable and available for every 100 extremely low-income households in the country, representing a national shortage of over 2 million units.¹¹ These shortfalls in affordable housing began long before the recent recession and will continue long after recovery.
- Although the Housing Credit creates near 100,000 affordable homes per year, the rate of construction is outpaced by the growing need for affordable rental housing. According to HUD's Summary of Worst Case Housing Needs, a record 8.5 million very low-income families nationwide are considered to have worst case housing needs in 2011, meaning they are very low-income renters who either paid more than half of their income for rent, lived in severely inadequate conditions, or both. The number of cases in 2011 rose from 7.1 million in 2009 and has been steadily growing since 2007. We cannot afford to lose or diminish the Housing Credit at a time when the housing recovery depends in such a large part on a rebounding rental market.

⁸ Joint Center for Housing Studies of Harvard University, *America's Rental Housing: Meeting Challenges, Building on Opportunity*, 2011.

⁹ Joint Center for Housing Studies of Harvard University, "State of the Nation's Housing 2010," 2010, p. 28.

¹⁰ Joint Center for Housing Studies of Harvard University, "State of the Nation's Housing 2012 Fact Sheet," 2012.

¹¹ National Low-Income Housing Coalition, "Housing Spotlight: The Shrinking Supply of Affordable Housing," 2012.

- The recession aggravated the affordability problem. Declining renter household incomes has made market rents out of reach for more families. Moreover, several recessionary forces are deepening the long-term shortfalls in the broad rental housing market. (1) Despite a recent rebound, multifamily construction starts are still not meeting demand, not to mention addressing an aggregate shortfall of 400,000 units below normal production during the recession. (2) Even as rental housing demand increases, financing for multifamily construction is constrained, in part because construction lenders cannot be sure that permanent financing will be available when construction is completed two years later, in light of the uncertain future of Fannie Mae and Freddie Mac and the curtailment of multifamily mortgage backed securities. (3) Household formation has begun to surge as the economic recovery takes hold, adding to demand-side pressure.
- Long-term demographic trends demonstrated by the Bipartisan Policy Center's Housing Commission report and Harvard's Joint Center on Housing Studies should also contribute to a rental housing shortfall. Three components of increasing demand are: (1) growth among elderly households, which tend to rent more than middle-aged households; (2) growth among the "echo boom" generation of young adults, also a demographic that favors rental housing; and (3) new immigrants. In addition, declining household incomes, reduced home equity, tighter home mortgage standards, and lower expectations for home price appreciation are reducing home buying, shifting demand to rental housing generally and especially among low- and moderate-income households. We see little hope that the broader rental housing market will accommodate widespread filtering to accommodate low-income households.

Recommendations

While the Housing Credit as a program is a permanent part of the tax code, there are crucial provisions of the program that are temporary. The Housing and Economic Recovery Act of 2008 (HERA) created a temporary minimum credit rate of 9 percent for new construction, provided that the projects are placed in service before the end of 2013. This provision was extended for projects allocated through the end of 2013 in the American Taxpayer Relief Act of 2012. This minimum credit rate eliminated the uncertainty of the previous "floating rate" system and helped fill funding gaps by providing more private equity to any one particular property – all without changing the cost of the program overall.

We urge the inclusion of a permanent minimum credit percentage in the tax code in order to boost financial feasibility of Housing Credit projects and provide continued stability to the affordable apartment market. In the 112th Congress, 91 House members of both parties, led by Chairman Tiberi and Ranking Member Neal, cosponsored legislation (H.R. 3661) to extend a minimum credit floor on a permanent basis. A companion bill in the Senate, S. 1989, enjoyed the bipartisan support of 25 senators. These changes would not change the overall cost of the program, but only how much equity can go into any given Housing Credit project – making the program even more successful.

The New Markets Tax Credit

Background

The NMTC is an extraordinarily flexible financing tool to encourage private investment in businesses and economic development activity in low-income urban, suburban, and rural communities. Through a modest credit against federal tax liability, it provides key low-cost capital in the form of both debt and equity for a wide variety of economic and community development purposes, such as retail centers, factories, job training centers, small businesses, charter schools, health centers and other developments that improve neighborhoods, boost local economies and create jobs. Such variety is due to the flexibility of the NMTC in allowing local market forces and community input to decide which projects and businesses are financed, so long as the project is in an economically distressed census tract, with the intention of spurring economic growth, creating local jobs and improving struggling communities.

The NMTC provides a 39 percent credit over seven years for investment in economically distressed communities. Taxpayers make investments in Community Development Entities (CDEs) that have received allocation authority from the Treasury Department's Community Development Financial Institutions Fund (CDFI Fund). CDEs are companies or partnerships that must have a primary mission of serving low-income communities and have established community accountability mechanisms. CDEs must demonstrate a track record in community development to be successful in the very competitive allocation process. A community development corporation, Community Development Financial Institution (CDFI) or loan fund or private financial institution are all examples of CDEs. The CDEs use the capital from those taxpayer investments to make loans or investments in businesses located in economically distressed communities.

Since its inception in 2000, NMTC authority allocated by the CDFI Fund to CDEs has generated over \$31 billion in private investment to help distressed communities. NMTC investment has helped to support more than 15,000 businesses, develop or rehabilitate over 89 million square feet of real estate and create over 500,000 jobs in hard-hit urban and rural areas, including roughly 200,000 permanent jobs and over 300,000 in construction.¹²

The NMTC program is among the Top 25 programs given the prestigious "Innovations in American Government Award,"¹³ administered by Harvard University. The GAO has issued three largely positive reports on the NMTC. That recognition is due in large part to the very successful public-private partnerships where private sector financing is brought to bear to bring community benefits to underserved low-income communities.

Need for Economic and Community Development in Low-Income Communities

Low-income urban neighborhoods and rural communities lack access to the patient capital needed to support and grow businesses, create jobs and sustain healthy local economies. Commercial banks and private investors are generally unwilling or unable to provide the necessary capital to support a start-up business, let alone finance a neighborhood revitalization. Long periods of disinvestment

¹² New Markets Tax Credit Coalition, *The New Markets Tax Credit Economic Impact Report 2003 – 2012*, December 2012.

¹³ New Markets Tax Credit Coalition, *The New Markets Tax Credit Economic Impact Report 2003 – 2012*, December 2012.

create a cycle that is very difficult to break. The NMTC provides a critical catalyst to change the cycle by closing funding gaps in low-income communities.

The benefits of an NMTC investment are widespread and varied, and both personal and community-wide. They include not only the direct jobs created at new businesses, but also the indirect jobs at the suppliers for those businesses and the increased property, income and sales tax revenue generated by these new business. The NMTC is also a major catalyst for the development of charter schools, giving children better educational opportunities and achievement, as well as access to better quality jobs upon graduation. Area residents have improved health outcomes due to improved access to medical care and healthy foods. Further, in exchange for a relatively small loss of tax revenue, federal and local governments experience savings on a variety of social service programs which are no longer supplied by the government because people have access to goods, services and income with which to procure those services.

Unlike the Housing Credit, where credits are awarded directly to deserving projects, NMTC allocation authority is awarded to CDEs through a competitive application process, and then the CDEs determine which businesses receive investments enhanced with NMTC. The NMTC program is made more efficient by having CDEs determine where the credits will be invested, since CDEs (instead of the government) bear the administrative burden of reviewing project applications, and only CDEs with a strong track record in community development work are awarded credits to distribute. The competitive application process ensures that CDE applicants are pushed to exceed the minimum requirements and make investments that result in the most meaningful community impacts in order to continue to receive allocation awards.

The New Markets Tax Credit: Effectiveness and Efficiency

What makes this credit so cost-effective for taxpayers is the extraordinary amount of private capital the program leverages. According to data from the Treasury Department, between 2003 and 2010, the NMTC generated over \$20 billion in private investment in communities with high poverty rates, low incomes and high unemployment rates. This \$20 billion leveraged an additional \$25 billion in capital from other public and private sources, financing almost 3,000 projects ranging from urban health care centers to rural factories and small business loan funds.¹⁴ These investments would not have been made without the NMTC. In 2007, the U.S. Government Accountability Office surveyed investors and reported that 88 percent indicated they would not have made the investment without the NMTC, and almost two-thirds said they increased their investments in low-income communities because of the NMTC – implying that NMTC investments did not replace or reduce other investments already being made in the same communities.¹⁵

While all NMTC investments are made in economically distressed rural and urban communities, more than 72 percent of all NMTC investments are made in communities with severe economic distress - communities with unemployment rates more than 1.5 times the national average, poverty rates of 30 percent or more, or median incomes at or below 60 percent of the area median.

¹⁴ New Markets Tax Credit Coalition, *The New Markets Tax Credit Economic Impact Report 2003 – 2012*, December 2012.

¹⁵ Government Accountability Office, *New Markets Tax Credit Appears to Increase Investment by Investors in Low-Income Communities, but Opportunities Exist to Better Monitor Compliance*, January 2007.

According to the Joint Committee on Taxation, the NMTC costs the federal treasury 26 cents in lost revenue for every NMTC dollar invested in a low-income community. Between 2003 and 2010, the cost to the federal government to generate more than \$20 billion in NMTC investments was \$5.2 billion. During that same period, the jobs and businesses financed with NMTC capital generated \$5.3 billion in federal tax revenue.¹⁶ In 2010 alone, NMTC investments in operational activities generated almost \$1.1 billion in federal tax revenue, easily offsetting the estimated \$720 million cost of the program for the federal government.¹⁷

In addition to this record of achievement, the NMTC enjoys a long history of bipartisan support. Inspired by Jack Kemp, the credit was authorized by the Community Renewal Tax Relief Act of 2000, approved by a Republican Congress, and signed into law by President Clinton. It was implemented and strongly supported by President George W. Bush. A Republican Congress authorized a special \$1 billion NMTC allocation in 2005. After it expired for the first time, it has been extended four times—in 2008, 2009, 2010 and most recently in the American Taxpayer Relief Act of 2012, which included a two-year (2012 and 2013) allocation of NMTC at \$3.5 billion annually—all with strong bipartisan support.

Recommendations

In the 112th Congress, 87 House members of both parties cosponsored the New Markets Tax Credit Extension Act of 2011 (H.R. 2655), which sought a five-year extension of the credit. A companion bill in the Senate, S. 996, also enjoyed the bipartisan support of 29 senators. Enterprise fully supported these bills, but also believes the program would be even more successful if the NMTC were made a permanent part of the Internal Revenue Code through comprehensive tax reform.

With over ten years of proven success in leveraging private investment to grow local economies, create jobs and transform neighborhoods, the NMTC deserves to be a permanent part of the tax code. In addition to allowing the program to transform more distressed communities, permanence would provide stability and certainty to this critical community development tool for low-income communities. With stability, the efficiency would increase and NMTC equity pricing would also subsequently increase, allowing for greater leveraging of private capital and even more benefit to the recipients of the low-income community investments.

Furthermore, we urge that Congress permit the annual level of allocations to be adjusted for inflation and to be applied against the Alternative Minimum Tax, as applies to the Housing Credit allocations and other code provisions are.

Conclusion

Speaker Boehner and Chairman Camp and other leaders of both parties have all called for a smarter tax code – one that is fair, simple and pro-growth. With a combined record of creating over 4 million jobs, leveraging over \$130 billion in private capital and transforming neighborhoods in all fifty states, both the Housing Credit and the NMTC have demonstrated that they have met these criteria and exceeded the expectations Congress has placed on them.

¹⁶ New Markets Tax Credit Coalition, *The New Markets Tax Credit Economic Impact Report 2003 – 2012*, Dec. 2012.

¹⁷ New Markets Tax Credit Coalition, *The New Markets Tax Credit Economic Impact Report 2003 – 2012*, Dec. 2012.



Again, we thank you for providing this opportunity and look forward to working with you and the Committee members throughout the tax reform process.

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